IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE TENTH DAY OF APRIL
TWO THOUSAND AND SEVEN

PRESENT
THE HON'BLE SRI JUSTICE BILAL NAZKI
and
THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.17732 of 2003

Between:

Sri B.M.Malani.

..... PETITIONER

AND

1.The Secretary,
Settlement Commission,
(Income Tax & Wealth Tax),
Additional Bench,
488 & 489, Anna Salai,
Nandanam, Chennai – 600 035 and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE BILAL NAZKI
and
THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.17732 of 2003

ORDER: ***(Per Hon'ble Sri Justice Bilal Nazki,)***

Heard the learned Counsel for the parties.

The petitioner is aggrieved of a notice issued to

him on 06-08-2003/08-08-2003 by the Settlement Commission. It appears that this notice has been issued on the basis of applications made by the Income Tax Department on
18-03-2002 and 08-04-2003 and also by the petitioner himself on 30th December, 2002.

The case of the petitioner is that after the Settlement Commission had decided the matter on 30-12-1999, the issues between the parties stood concluded and no further notice could be given to the petitioner to reopen the controversy, which had been settled.

Mr.S.R.Ashok, the learned Senior Counsel appearing for the respondents, however, submits that the Settlement Commission had given the waiver of interest, which was not permissible in view of the judgment of the Supreme Court reported in ***Commissioner of Income Tax vs. Anjum M.H.Ghaswala & Ors.***[1]. Therefore, this was brought to the notice of the Settlement Commission and the Settlement Commission was bound to correct its order, if it was found to be against the law laid down by the Supreme Court.

Mr.Siva Swamy, the learned Counsel for the petitioner, on the other hand, submits that the judgment of the Supreme Court (1st cited supra), on which, the Income Tax Department wants to rely is again subject matter of debate and the Supreme Court by order dated 14-12-2004 has already referred the judgment 1st cited supra to a Constitution Bench in a judgment reported in ***Brijlal and Ors. vs. Commissioner of Income Tax and Ors***[2]***.*** In Para 2 of the said judgment, the Supreme Court made the following observations:

> 'Learned counsel for the appellants/petitioners submitted that in the case of CIT vs. Anjum M.H. Ghaswala (2001) 171 CTR (SC) 1 : (2001) 252 ITR 1 (SC), decided by the Constitution bench, the question whether ss. 234A, 234B and 234C of the IT Act, 1961 (for short "the Act"), are at all applicable to proceedings of the Settlement Commission under Chapter XIX-A of the Act did not arise for consideration and the judgment of the Constitution bench proceeds sub silentio on the point by assuming that these sections are so applicable. However, this is a plea which we deem proper to be considered by a Constitution Bench.'

Since the matter is still pending before the Constitution Bench of the Supreme Court, we do not

feel it appropriate to decide the controversy between the parties at this stage. Similarly, we also do not feel it appropriate for the Settlement Commission to decide the controversy, till the matter is decided by the Constitution Bench of the Supreme Court.

With these observations, we dispose of the Writ Petition directing the Settlement Commission to proceed with the matter in pursuance to the notice dated
06-08-2003/08-08-2003, only after hearing the petitioner and after the judgment is pronounced by the Constitution Bench of the Supreme Court. No costs.

(Bilal Nazki, J)

10th April, 2007

(Nooty Ramamohana Rao, J)

LUR

[1] (2001) 252 ITR 1 (SC)

[2] (2005) 279 ITR 432 (SC)